



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Avanti Construction Corporation
File: B-229839
Date: March 14, 1988

DIGEST

1. Where workpapers contain clear and convincing evidence that the low bidder mistakenly omitted certain direct costs from its bid, and where corrected bid would remain low, the bid may be corrected upward to reflect such costs.
2. In limited circumstances, correction may be allowed even though the intended bid price cannot be determined exactly, provided there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and would remain low after correction. However, correction is limited to increasing the contract price upward only to the bottom end of the range of uncertainty.

DECISION

Avanti Construction Corporation protests the Veterans Administration's (VA) denial of its preaward request to correct a mistake in its low bid submitted in response to invitation for bids (IFB) No. 86-1120. The IFB is for the performance of interior wall maintenance at the VA Medical Center, Tuskegee, Alabama.

We sustain the protest.

Three bids were received at bid opening on September 25, 1987. Avanti's bid of \$323,600 (bid item 1)1/ was low.

1/ The solicitation also contained two alternate deductive items. The propriety of the correction of these two items need not be separately discussed since the identical issue is presented by Avanti's request for correction of bid item No. 1. Further, the protester has not put the correction of these two items at issue apart from the propriety of the correction of bid item No. 1.

Sippial Electric submitted the second low bid of \$488,620. The government estimate was \$434,567. Shortly after bid opening, the contracting officer, suspecting a mistake in Avanti's bid, requested the firm to review its worksheets and verify its bid. On September 29, Avanti advised the contracting officer that the bid contained two errors and that its intended bid price was \$468,020. By letter of September 30, Avanti explained that it had mistakenly omitted from its bid a price of \$33,660 for 10,200 square feet of drywall at \$3.30 per square foot. This drywall figure was listed, among other items, in its "Resilient Flooring/Drywall" estimate sheet, but was not included in the total sum on that worksheet which was recorded as \$33,000, rounded from \$33,001. The protester explained that it subsequently failed to carry over this \$33,660 amount to its summary estimate sheet, which lists the incorrect \$33,000 amount as its total estimate for "resilient/drywall." Avanti claimed that its intended price for this item, including the omitted \$33,660, was \$66,660.

The second alleged transcription error pertained to Avanti's estimate for vinyl and painting. Avanti explained that instead of totaling the figures on its estimate sheet for "Vinyl Painting/Wall Coverings" and transferring that total of \$204,080 to its summary estimate sheet, it mistakenly recorded the square foot amount of 93,320 as its price. Thus, Avanti also requested that its bid be corrected to include the omitted sum of \$110,760 for the vinyl and painting, which figure it obtained from subtracting the incorrectly recorded amount of \$93,320 from the intended amount of \$204,080. Adding the two alleged omissions, (\$110,760 for vinyl and painting and \$33,660 for drywall), Avanti requested that its bid be corrected upward by \$144,420, claiming that its intended bid was \$468,020.

The contracting officer reviewed the protester's worksheets and noted that Avanti had not adjusted its profit and overhead to reflect the requested increase in price. Avanti explained that it had initially calculated its profit and part of its overhead by using a 5 percent margin against an estimated \$400,000 base (the remainder of its overhead, also calculated from the same base, was itemized in its worksheets for expenses such as legal, insurance coverage, and bonds). Since the protester had subsequently adjusted this base to \$468,020, Avanti then applied the 5 percent margin to the approximately \$68,000 difference and requested that its bid price be increased by \$3,400 for additional profit and overhead ("expense and margin"), and \$3,259 for the other listed overhead items, to reflect its intended total bid of \$474,679.

The agency determined that the evidence submitted by Avanti indicated that a mistake had been made, but that the firm's intended bid was not clear. The VA denied Avanti's request to correct its bid and instead decided to permit the firm to withdraw its bid. Avanti then filed its December 18, 1987, protest with our Office requesting that it be permitted to correct its bid to reflect its "intended" bid price of \$474,679 and that it be awarded the contract.

A bidder who seeks upward correction of its bid prior to award must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended price. The closer an intended bid is to the next low bid, the more difficult it is to establish that it is the bid actually intended and, for that reason, correction often is disallowed when a corrected bid would come too close to the next low bid. Vrooman Constructors, Inc., B-226965.2, June 17, 1987, 87-1 CPD ¶ 606. In limited circumstances, correction may be allowed even though the intended bid price cannot be determined exactly, provided there is clear and convincing evidence that the amount of the intended bid would fall within a narrow range of uncertainty and would remain low after correction. Id.; J.C.K. Contracting Co., Inc., B-224538, Jan. 9, 1987, 87-1 CPD ¶ 43. Correction, however, is limited to increasing the contract price upward only to the bottom end of the range of uncertainty. Western Alaska Contractors, B-220067, Jan. 22, 1986, 86-1 CPD ¶ 66.

Here, the agency agrees that the documentation supplied to the contracting agency by Avanti in support of its claimed mistake does indeed provide clear and convincing evidence that Avanti erroneously omitted certain amounts from its estimates for resilient flooring/drywall and vinyl and painting. Avanti has reasonably explained that in its haste to prepare its bid, it simply neglected to carry the correct drywall and vinyl and painting costs forward from its initial estimate sheets to the final summary worksheet and the bid itself. In light of the fact that the workpapers show that the subtotals representing all other cost components were transferred from the initial estimate sheets to the final bid summary sheets and then incorporated into the actual bid, we find that the workpapers present clear and convincing evidence that Avanti intended to include at least the \$33,660 drywall and \$110,760 vinyl and painting costs in its bid total. See Western Alaska Contractors, B-220067, supra. Thus, we conclude it is clear that the amount of \$144,420 was erroneously omitted from the calculation of Avanti's bid.

Concerning its failure to have provided for additional overhead and profit to correspond with its request for an


increase in bid, the protester claimed that it would have applied the 5 percent margin to the additional \$68,000 that had not been included in its original overhead and profit determination. The worksheets submitted by Avanti indicate that when it initially prepared its bid it estimated the cost of the project and arrived at an approximate "base" of \$400,000--a rough estimate based upon its experience and the fact that the agency had "bracketed this job in its pre-bid information in a monetary range of between \$250,000 and \$500,000"--which it used for the purpose of calculating its overhead and profit. However, we question the propriety of Avanti's use of this \$400,000 figure to calculate its overhead and profit in light of the fact that it ultimately submitted a much lower initial bid of \$323,600. We find it plausible, therefore, that if Avanti had initially added the items correctly and arrived at a total estimate of \$468,020, it might have similarly chosen to calculate its overhead and profit against an estimated base of up to \$500,000, the ceiling amount for which this job was bracketed. We therefore find that the amount of any additional overhead and profit related to an increase in Avanti's corrected bid is at best speculative, since the protester admits that the base which it used to calculate its overhead, and which forms the adjusted base for its correction request for overhead, is a figure not based on its actual direct costs. Although we find clear and convincing evidence of the two omissions from Avanti's direct costs, we do not find that Avanti has presented clear and convincing proof of its additional overhead and profit it intended to bid, and therefore, the contract should not be modified to adjust for such requested increase. See Western Alaska Contractors, B-220067, supra.

In any event, we have held that if there is a range of uncertainty regarding the intended bid, as there is in this case, correction should place the contractor at the bottom end of that range. Id. Here, the disallowed overhead expenses amount to \$6,659 of a total correction request of \$151,079, for a requested total corrected bid of \$474,679. The protester has shown by clear and convincing evidence its entitlement to a corrected bid of \$468,020 (\$474,679 minus \$6,659). Further, the next low bid is at a price of \$488,620. Additionally, we note that even if Avanti had estimated its overhead and profit against a \$500,000 base, the largest amount for which this job had been bracketed by the agency, its bid would still have remained low. Thus, the range of uncertainty in Avanti's intended price is relatively narrow, ranging from more than 2 percent to 4 percent below the next low bid. We conclude that Avanti has submitted clear and convincing evidence that it mistakenly omitted \$144,420 from its bid which supports

correction of Avanti's bid to \$468,020, the bottom end of the range of uncertainty in its intended price.^{2/}

We therefore recommend that the VA correct Avanti's bid to increase the price by the omitted costs of \$144,420 and make award to Avanti at its corrected bid price of \$468,020, if otherwise proper.

We sustain the protest.

for 
Comptroller General
of the United States

^{2/} The VA also expresses concern over a number of minor discrepancies it found in the various workpapers submitted by Avanti. However, we do not view the alleged discrepancies as precluding correction in this case since the protester has explained the alleged discrepancies, which concern portions of the worksheets which have little relation to the type of error claimed by Avanti. We find these discrepancies to be de minimis, having only a negligible combined effect on the bid price, and as not precluding correction. See Western Alaska Contractors, B-220067, supra.